



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 28, 1995

Mr. Roger Beecham  
Passman & Jones  
2500 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

OR95-891

Dear Mr. Beecham:

As counsel for the Dallas County Water Control and Improvement District No. 6 (the "district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34779.

The district received a request for the following information:

1. Any and all fiscal year-end financial reports, audits, evaluations, or investigations made by, of, or for the [district] for the previous five (5) year period of time;
2. Each and every annual budget for the five (5) year period preceding your receipt of this letter;
3. All working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by the district, on completion of the estimate for the two (2) year period preceding your receipt of this letter;
4. A complete description of the district's central and field organization, including all locations at which the district maintains offices, warehouses, or other facilities, all employees from whom the public may obtain information or submit requests, and the methods by which the public may obtain information;

5. Any and all lists of inventory, equipment and/or assets as well as any appraisals thereof;
6. All invoices, bills, statements or other documents indicating all charges made to the district by any attorney or legal representative; and,
7. A map or diagram which indicates the entire geographic area and all locations for which the district provides services.

You assert that the district may withhold the requested information from required public disclosure based on section 552.103 of the Government Code. You also assert that the district may withhold attorney fee bills from required public disclosure based on section 552.107(1) of the Government Code. You have enclosed representative samples of the requested information for categories 1, 2, 4, 5, 6, and 7.<sup>1</sup> These samples include financial statements for the past five years, the district's annual budgets for the past five years, a January 17, 1992, memorandum concerning the district's procedures for handling open records requests for information, a schedule of property, three attorney fee bills, and a map showing, among other things, the district's service area. The district enclosed no representative samples of the third category of information, records used to estimate the need for the expenditure of public funds. You say this category of information is overbroad.<sup>2</sup>

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). Section 552.103 applies to information that relates to a contested case conducted before an administrative agency under the Administrative Procedure Act (the "APA"), Government Code chapter 2001. *See id.*

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>You also contend that the fifth category of requested information is overbroad. When a governmental body receives a request for a very broad class of information, it should inform the requestor of the kinds of information available to assist the requestor in narrowing the request. *See* Open Records Decision No. 87 (1975).

You assert that section 552.103 applies because an administrative proceeding in which the district is a party is both reasonably anticipated and pending. You inform us that the city council of the city of Balch Springs passed Resolution No. 385 to file an application with the Texas Natural Resource and Conservation Commission ("TNRCC") for a certificate of convenience and necessity (a "CNN") and to cancel any other entities' CNN, including that of the district. You also inform us that the district filed an application with TNRCC for a municipal wastewater discharge permit. You state that the city of Balch Springs is protesting this application. You make the following assertions concerning the relatedness of the requested information to these permit proceedings:

The requestor is attempting to obtain these documents in hopes of obtaining evidence in support of its anticipated application to obtain a CCN and combating the district's CCN within the wastewater discharge permit proceeding that is currently pending. Because the use of this information is clearly related to the impending and pending litigation that will occur between Balch Springs and the [d]istrict, the district submits that the requested documents fall within section 552.103 . . . .

You also say that the need for the expenditure of public funds is a central issue in the pending permit proceeding.

We will assume that the hearing on the district's application for a permit to discharge wastewater is conducted before the TNRCC under the APA. We can therefore conclude that litigation is anticipated and pending. See Open Records Letter No. 95-763 (1995). However, with two exceptions noted below, we do not believe that the district has adequately explained how the requested information relates to an issue in the pending and anticipated proceedings. Moreover, any part of the requested information that was adopted or approved at a public meeting, for example, the annual budgets, is a public record that the district may not withhold from disclosure based on section 552.103. See Open Records Decision No. 221 (1979).

With regard to the attorney fee bills, we conclude otherwise. The bills indicate on their face that they concern the litigation. We, therefore, conclude that pursuant to section 552.103, the district may withhold from required public disclosure the portions of the bills that contain the descriptions of the services rendered. Section 552.103 does not apply to the remaining information on the bills.

Nor does section 552.107(1) apply to the fee bill information not covered by section 552.103. 552.107(1) protects only the details of the substance of an attorney-client communication, that is, only attorney advice and opinion, or a client confidence. See Open Records Decision No. 574 (1990).

We also can conclude that the map relates to the litigation. The district may withhold the map from required public disclosure pursuant to section 552.103.<sup>3</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 34779

Enclosures: Submitted documents

cc: Mr. David M. Berman  
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<sup>3</sup>We note that if the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).